

Cowper Law LLP

10880 Wilshire Blvd. Suite 1840
Los Angeles, CA 90024
877.529.3707

January 20, 2020

Sent via ECF and Electronic Mail

Judge David G. Campbell
Senior United States District Judge
Sandra Day O'Connor U.S. Courthouse, Suite 623
401 West Washington Street, SPC 58
Phoenix, AZ 85003-2156

**IN RE: Bard IVC Filters Products Liability Litigation
(Hugh Fraser, No. 2:15-MD-02641-DGC)**

Dear Judge Campbell,

This firm represents plaintiff Hugh Fraser in the Bard IVC litigation. Hugh Fraser was implanted with his IVC filter and treated at Stanford University but now resides in Arizona. As a result, diversity no longer exists in this case and the client has been included for dismissal on the Parties' Joint Report responding to the Court's January 6, 2020 order regarding settlement of cases. We agree that the court now lacks subject matter jurisdiction and we intend to re-file the case in State court in Arizona.

This firm reached out to Richard North on January 11th and requested that counsel consent to a voluntary dismissal without prejudice and included language preserving the statute for purposes of re-filing the case in Arizona state court. Mr. North responded on January 12th and stated he would agree to the voluntary dismissal but not with the language preserving the statute of limitations. He also stated that "this very issue" was addressed in one of your Honor's previous CMOs but we have been unable to identify any CMO where the Court has addressed the below "saving statute" in Arizona.

Under the "saving" statute in Arizona, "[i]f an action is commenced within the time limited for the action, and the action is terminated in any manner other than by abatement, voluntary dismissal, dismissal for lack of prosecution or a final judgment on the merits, the plaintiff, or a successor or personal representative, may commence a new action for the same cause after the expiration of the time so limited and within six months after such termination. **If an action timely commenced is terminated by abatement, voluntary dismissal by order of the court or dismissal for lack of prosecution, the court in its discretion may provide a period for commencement of a new action for the same cause, although the time otherwise limited for**

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commencement has expired. Such period shall not exceed six months from the date of termination.” See [AZ Rev Stat § 12-504 \(2015\)](#)

We request that this court dismiss the above action for lack of subject matter jurisdiction but do so without prejudice and provide a time period to re-file the case in Arizona State court pursuant to the above saving statute. Thanks in advance.

Sincerely,



C. Moze Cowper

cc: Richard North, Esq.
Ramon Lopez, Esq.